IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE SECOND DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE GHULAM MOHAMMED

WRIT PETITION NO : 16481 of 1991

Between:

Datla Venkatapathi Raju S/o. Venkatapathiraju
Lakshminarasapuram Anaparti Mandal, East Godavari District.

....PETITIONER

AND

1.Agent to Government (District Collector)

East Godavari District, Kakinada.

2.Deputy Collector, Tribal Welfare,

Rampachodavaram, East Godavari District.

3.Mandal Revenue Officer Rajavommangi,

East Godavari District.

4.Kalimkota Gangayya S/o. Bodayya
Rajavommangi, East Godavari Dist.

5.Kalimkota Nukayya S/o. Kittayya
Rajavommangi, East Godavari Dist.

.RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ of Certiorari or any other appropraite Writ, Order or direction, calling for the records realting to C.M.A. No. 19 of 1991 on the file of the First Respondent, and quash the order dt. 13-11-1991 passed therein confirming the order in LTRP No. 78/90 of the Second Respondnet, and consequently direct the Respondents to refrain from interfering with the petitioner's possession and enjoyment of the lands

bearing R.S.Nos.. 41/1 & 2 and 44/1 of Rajavommangi, East Godavari District and the structures therein

Counsel for the Petitioner:MR.NUTY RAM MOHAN RAO

Counsel for the Respondent Nos.1 to 3:G.P. for Social Welfare.

Counsel for the Respondents 4 and 5: None appeared.

The Court made the following :

ORDER

1. This Writ Petition is filed seeking to quash the order dated 13-11-1991 passed in C.M.A.NO.19 of 1991 on the file of the first respondent confirming the order in LTRP No.78 of 1990 passed by the second respondent and consequently direct the respondents to refrain from interfering with the petitioner's possession and enjoyment of the lands bearing R.S.Nos.41/1 and 2 and 44/1 in Rajavommangi village, East Godavari District and the structures therein.

2. The case of the petitioner is that his father late Venkatapathi Raju purchased an extent of Ac.13-24 cents of land in Sy.Nos.41/1 and 2 and 44/1 of Rajavommangi village under registered sale deed dated
8-9-1940 from Cheedipalli Nukaraju and others who belong to tribal community. It is stated that the vendor's father Tatayya obtained permission from the Revenue Divisional Officer, Peddapuram as per Section 4(1) of the Agency Tracts Interest and Land Transfer Act, 1917. After the death of petitioner's father, the petitioner has been in possession and enjoyment of the land. While so, LTRP No.689 of 1979 was filed by one Apparao, who is the nephew of Nukayys, fifth respondent herein for restoration of land in question and the Deputy Collector (Tribal Welfare), East Godavari District, after detailed enquiry dismissed the said petition by order, dated 16-05-1980, holding that the lands were sold to the petitioner's father pursuant to the valid permission issued by the Assistant Agent to Government (Revenue Divisional Officer) Peddapuram and the order has become final. Further, no appeal is preferred by Appa Rao before the Agent to Government. Thus, the petitioner submits that the order operates as *res judicata*.

3. While so, the Special Deputy Tahsildar (TW) Rajavommangi filed a complaint on behalf of the respondents 4 and 5 herein in L.T.R.P.No.78 of 1990 before the Deputy Collector (Tribal Welfare) East Godavari District, under Section 3 of the A.P. (SA) Land Transfer Regulartion I of 1959 (for short 'the Regulations') as amended by Land Transfer Regulation I of 1970 for restoration of the schedule land to the respondents 4 and 5 from the petitioner herein. The petitioner herein contested the petition stating that he had purchased the petition schedule land from Cheedipalli Nookaraju through a Registered sale deed with the permission of Revenue Divisional Officer, Peddapuram and as such the petition is not maintainable. Apart

from this, L.T.R.P.No.689 of 1979 was filed before the Deputy Collector, (Tribal Welfare), East Godavari District, and the same was dismissed.

4. The Deputy Collector on considering the material on record directed the Mandal Revenue Officer, Rajavommangi to evict the petitioner from the land in question and restore it to the respondents 4 and 5 herein. Aggrieved by the said order, the petitioner preferred C.M.A.19 of 1991 before the Agent to Government, East Godavari, Kakinada, who confirmed the order of the Deputy Collector holding that the sale transaction in favour of the father of the petitioner herein was violative under Section 4(1) of the Act 1/1917 read with Section 3 (1) of the Regulation. Hence this Writ Petition.

5. The learned counsel for the petitioner submits that the second respondent has no jurisdiction to entertain the case when there is no prohibited transfer at all. The respondents deliberately ignored the clear cut permission granted by the Revenue Divisional Officer, Peddapuram, stating that the permission is granted to the father and not to the sons and the orders passed by the Revenue Divisional Officer, Peddapuram, operates as *res judicata*.

6. On the other hand, the learned Government Pleader for Social Welfare appearing for the the respondents 1 to 3 contended that in view of benami nature of transaction, no relief can be granted under Article 226 of Constition of India. He has also placed reliance on the decision of the Division Bench of this Court in ***Special Deputy Collector (Tribal Welfare) vs. Datla Venkatapathi Raju*** wherein it was held that:

> "The Provisions of Sub Section (1) of Section 3 of the Regulation make it very clear that there is a statutory bar on alienation of immovable property situate in the agency tracts by a person, whether or not such person is a member of Scheduled Tribe. The bar contained in sub-section (1) of Section 3 of the Regulation operates in present. Simply because in the earlier proceedings acquisition of the schedule lands by the 1st respondent/writ petitioner by way of transfer

was held to be in order and legal, that circumstance itself would not come in the way of the statutory authority, like the 1st appellant, exercising the power conferred upon him under sub-section (2) of Section 3 of the Regulation, if he subsequently come to know that the 1st respondent, after such acquisition, in turn, transferred the schedule lands in favour of third parties in breach of the bar contained in sub-section (1) of Section 3 of the Regulation."

7 . A perusal of the order of the Deputy Collector (T.W.) reveals that the Special Deputy Tahsildar had enquired into the case and found that the respondents 4 and 5 herein are tribals and belong to Konda Kapu community whereas the petitioner herein is a Kshtriya by caste. It is also observed that the petition schedule land was earlier registered in the names of the fathers of the respondents 4 and 5 in Ex.P1-settlement Register and they gave the land to the petitioner herein for grazing purpose at Rs.100/- per annum and when the petition did not re-deliver the land to the respondents 4 and 5, a complaint was filed for restoration of land to the respondents 4 and 5 on the ground that the petitioner is a non tribal. The original authority viz.,Deputy Collector (T.W.) after considering the contentions and evidence of the petitioner held that the petitioner belonging to Kshtriya community, is a non-tribal and as such, the petitioner is liable to be evicted. Further, the alleged transfer of land is hit by the provisions of the Regulation. The appellate authority confirmed the order of the Deputy Collector (T.W.).

8 . A plain reading of the Division Bench decision relied upon by the learned Government Pleader for Social Welfare in *Special Deputy Collector (Tribal Welfare) vs. Datla Venkatapathi Raju* (1 supra) shows that even though the acquisition of schedule land by way of transfer is held to be legal in earlier proceedings, it would not bar the statutory authority to take action under Section 3 (2) if it subsequently comes to know that those lands are transferred to third parties in breach of bar contained in Section 3 (1) of the Regulation. This decision squarely applies to the facts of the present case. The original authority as well as the appellate authority on appreciation of the material on record, concurrently held that the transfer of land in question in favour of the petitioner is held as null and void as per Section 3 (1) of the Regulation. Apart from that, this Court in exercise of its jurisdiction under Article 226 of the Constitution of India cannot adjudicate the disputed question of fact more so

when the authorities constituted under the Act have elaborately dealt with the matter. In these circumstances, I do not find any reasons to interfere with the orders of the Deputy Collector and District Collector. Therefore, the Writ Petition is liable to be dismissed.

9. Accordingly, the Writ Petition is dismissed. No costs.

02-09-2004.

Hsd

Assistant Registrar

// true copy //

Section Officer

To

1.Agent to Government (District Collector)

East Godavari District, Kakinada.

2.Deputy Collector, Tribal Welfare,

Rampachodavaram, East Godavari District.

3.Mandal Revenue Officer Rajavommangi,

East Godavari District.

4.2 C.Cs to G.P. for Social Welfare, High Court Buildings,Hyderabad (Out)

5. 2 C.D. copies.